

Professional Negligence Conference

14–15 July 2005

By Phil Gleeson

2005 saw a return to the banks of the Yarra River and the Crown Entertainment complex for the Lawyers Alliance. Morning newspapers on the first day of the conference were reporting the opening arguments by American trial lawyers in the Texas-based Vioxx test case.

In addition to Vioxx, recent years have seen the efficacy of hormone replacement therapy questioned, as well as close scrutiny of a certain manufacturer of so-called 'natural remedies'. Australian courts may soon be enquiring whether pharmaceuticals are appropriately regulated in this country.

So it was with well-managed timeliness, or great luck, that our opening speakers were Deborah Monk from Medicines Australia and Dr Paul Komesaroff of Monash University. Together they explained the supervisory role played by the Therapeutic Goods Administration when a corporation proposes to import a medicine into this country. Dr Komesaroff confirmed what medical litigators have long suspected – that the outcome of medical research, or any research for that matter, can and will be subject to all manner of external influences, not least of which may be that exerted by the research sponsor.

For the squeamish, ophthalmic surgeon, Joe Reich, gave a challenging presentation on laser and other eye surgery. For those who didn't need to avert their own eyes, the presentation was terrifically informative. His video footage of surgery being performed upon an ocular lens left nothing to the imagination, and gave most delegates newfound respect for Swiss engineering.

From the NSW bar, we were privileged to hear from Julia Lonergan, who guided us through the NSW Court of Appeal decision of *Rufo v Hosking*, the case that has ensured the words 'loss of a chance of a better outcome' is added to statements of claim around the country.

In an era when we are all attempting to tease out the boundaries of civil liability reform, we benefited from the expert analysis of intentional torts and the limits of qualified

privilege from Tina Cockburn and Richard O'Keefe respectively. Richard's paper, in particular, is currently by my side as I grapple with the WA *Health Act* and the privileged status of the Health Department's perinatal morbidity committee.

Thanks to Elizabeth Brophy and Dr Richard Whiting, delegates have expanded their lexicons to include the term 'Elder Law' and were given an insight into what can only be a growing area of legal practice.

As always, I suspect, many delegates would consider the most valuable aspects of the conference to be their conversations with speakers during meal breaks and at the Thursday evening dinner. It is easy to underestimate the value of the learning experience from this sort of exchange and, more than anything, the sense of renewed confidence and morale that comes from forging new relationships.

To all the remaining medical speakers whom I have been unable to thank individually, I offer my gratitude on behalf of all the organising committee, particularly to those who offered their services at short notice.

As always, the intersection of law and medicine produced, in my opinion, some of the most interesting and challenging issues in plaintiff litigation. Add to that the high standard of presenters, and the outcome was a great conference. If pushed to nominate a highlight, Bruce Barrowclough gets my vote. He's an engaging speaker and it's refreshing for litigators with an interest in professional standards to hear what steps are being taken to shift professional culture to achieve improvements in patient safety.

As always, this conference would not take place without our major partner, LawMaster, our partners Ipac and Evidex, and the efforts of Kim, Eva and Jake of the Lawyers Alliance. ■

Phil Gleeson is practice group leader at Slater & Gordon in Perth.
PHONE (08) 9223 4800. EMAIL pgleeson@slatergordon.com.au